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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,296	06/25/2003	Jean Pierre Giraud	62501.010401	3244
45599	7590	05/06/2005	EXAMINER	
GREENBERG TRAURIG LLP MET LIFE BUILDING 200 PARK AVENUE; 14TH FLOOR NEW YORK, NY 10166			BUI, LUAN KIM	
		ART UNIT		PAPER NUMBER
				3728
DATE MAILED: 05/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/603,296	GIRAUD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Luan K Bui	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 25 March 2005.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 and 6-9 is/are rejected.
- 7) Claim(s) 5 and 10 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 March 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

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As a point of clarification, in the amendment to the specification filed on 11/4/2004, under brief description of drawings, Figure 7 has been changed to Figure 7A. There is no Figure 7A in the drawings. Correction is required.

***Terminal Disclaimer***

1. The terminal disclaimer filed on 3/25/2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,705,463 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Drawings***

2. The drawings were received on 3/25/2005. These drawings are approved by the Examiner.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

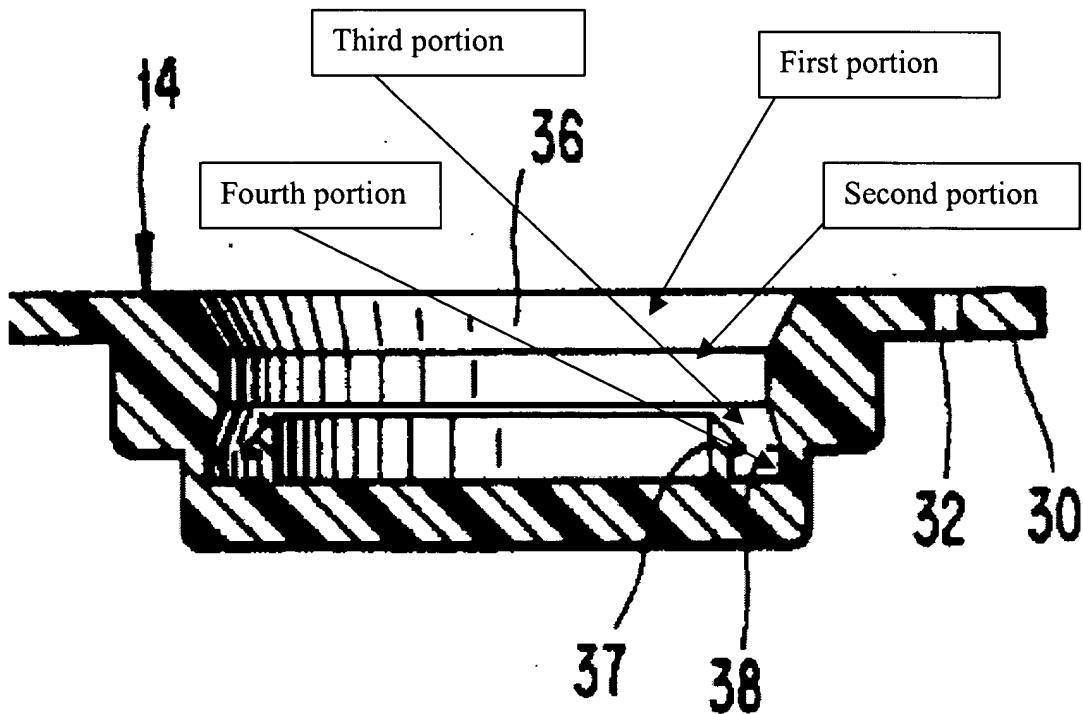
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6, 7 and 9 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Abrams et al. (5,133,470; hereinafter Abrams'470) in view of Thomas et al. (3,346,099; hereinafter Thomas'099). Abrams'470 discloses a resealable container (10, 12) and cap assembly (14) comprising a container (12) and a correspondingly shaped cap integrally attached to the

container. The container having an upper portion with an upstanding rim (18) and the cap having a base with an outer periphery and a skirt (36) extending perpendicularly and outwardly around the outer periphery of the base. The skirt having an inner wall and the inner wall including at least four portions (Figure 1). A first portion that is conically tapered, extends downward from a top portion of the skirt and is substantially planar, a second portion connected to the first portion and substantially connected to the base, a third portion connected to the second portion, a fourth portion connected to the third portion. The inner wall having at least one cap recess (38) formed by at least the third and fourth portions of the inner wall of the skirt. Abrams'470 further discloses the cap having opposing ends including a thumb tab (30) and at least one hinge attached to the container. The hinge comprises at least one hinge recess bend point (16). Abrams'470 also discloses the other claimed limitations except for the container and the cap being non-cylindrical and moisture-proof is obtained when the container is fully closed. Thomas'099 teaches a moisture-proof container (1) comprising a non-cylindrical container (3) and a correspondingly shaped non-cylindrical cap (2). It would have been obvious to one having ordinary skill in the art in view of Thomas'099 to modify the container of Abrams'470 so the container and the cap comprise a non-cylindrical shaped because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. In re Dailey et al., 149 USPQ 47. It would have been obvious to one having ordinary skill in the art in view of Thomas'099 to modify the container of Abrams'470 as modified so the resealable container comprises a moisture-proof seal when the container is fully closed for better protecting the contents and it appears that the container of Abrams'470 is a

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moisture-proof container. The container of Abrams'470 is capable of holding at least one product selected from the group consisting of candy and cigarettes.



5. Claims 1-4 and 8 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 6 above, and further in view of Jackisch et al. (5,114,003; hereinafter Jackisch'003). The assembly of Abrams'470 as modified further fails to show a desiccant insert. Jackisch'003 shows a moisture-proof resealable container and cap assembly comprising a container (1) having a desiccant insert (5) and a cap (8) sealed the container to provide a moisture-proof assembly. It would have been obvious to one having ordinary skill in

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the art in view of Jackisch'003 to modify the assembly of Abrams'470 as modified so the assembly includes a desiccant insert for absorbing the moisture within the container for further protecting the contents within the container. As to claim1-4, it would have been obvious to one having ordinary skill in the art in view of Abrams'470 as modified to remove an annular seal member/interlocking mechanism (37) from the cap because the cap is capable of providing a proper seal with the container when the rim of the container engages the cap recess and such modification is reduced the cost of manufacture.

*Allowable Subject Matter*

6. Claims 5 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

Applicant's arguments with respect to 3/25/2005 have been considered but are deemed to be moot in view of the new grounds of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ms. Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.

lkb  
May 4, 2005

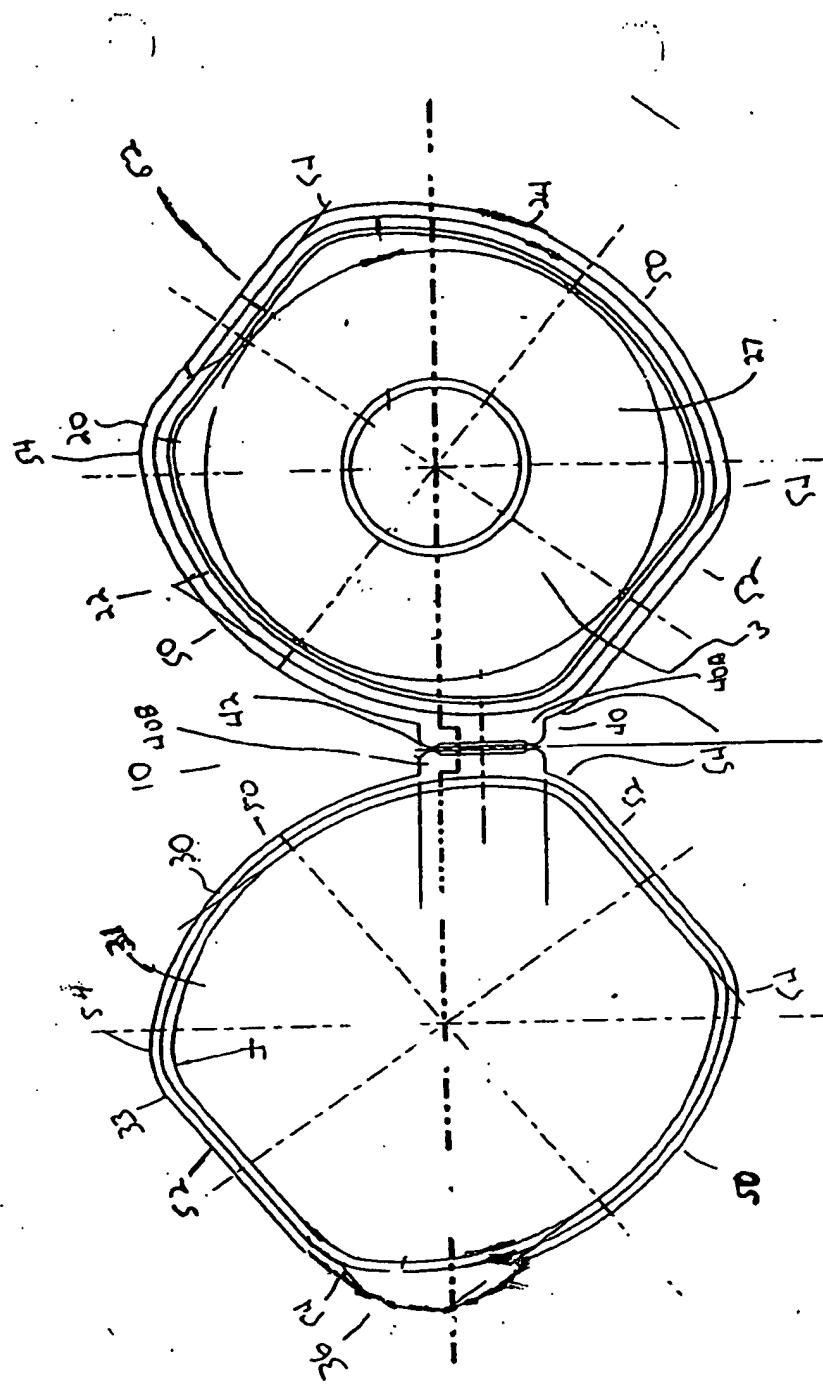


Luan K. Bui  
Primary Examiner

OK TO ENTER. LIB 4/29/05

## Replacement Sheet

Figure 2





Replacement Sheet 1)

